

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

**THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN**

TUESDAY, THE 7TH AUGUST 2007 / 16TH SRAVANA 1929

WA.No. 1917 of 2007

(AGAINST THE JUDGEMENT IN OP.16986/1998 Dated 08/12/2006)

APPELLANTS/ PETITIONERS IN THE O.P.

1. AMEER AHAMMED, S/O.PADIYATH MANAPPATHYDROSE,
NJALAKOM KARA, THRIKKAKARA NORTH VILLAGE, KALAMASSERY.
2. MRS.ANITHA AMEER, W/O PADIYATH AMEER AHAMMED, NJALAKOM
KARA, THRIKKAKARA NORTH VILLAGE, KALAMASSERY.
3. SUHAIL AMEER, S/O.PADIYATH AMEER AHAMMED, NJALAKOM KARA,
THRIKKAKARA NORTH VILLAGE, KALAMASSERY.
4. FATHMA AMEER, D/O PADIYATH AMEER AHAMMED, NJALAKOM KARA,
THRIKKAKARA NORTH VILLAGE, KALAMASSERY.

BY ADV. SRI.MOHAN JACOB GEORGE
ADV. SMT.P.V.PARVATHI
ADV. SMT.REENA THOMAS
ADV. SRI.TITUS THOMAS
ADV. SRI.L.RAM MOHAN

RESPONDENTS/RESPONDENTS IN THE O.P.:

1. VILLAGE OFFICER, THRIKKAKKARA NORTH VILLAGE,
KANAYANNOOR TALUK, ERNAKULAM.
2. TAHSILDAR, KANAYANNOOR TALUK, ERNAKULAM.
3. REVENUE DIVISIONAL OFFICER, FORT COCHIN.
4. DISTRICT COLLECTOR, CIVIL STATION, KAKKANAD, ERNAKULAM.
5. STATE OF KERALA REPRESENTED BY ITS SECRETARY,
FINANCE DEPARTMENT, SECRETARIAT, TRIVANDRUM-1.

BY SR. GOVERNMENT PLEADER SMT. R. MEERA.

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION
ON 07/08/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

H.L. DATTU, C.J. & K.T. SANKARAN, J.

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W.A. No. 1917 OF 2007
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Dated this the 7th August, 2007

J U D G M E N T

H.L. Dattu, C.J.:

The only question that arises for consideration and decision of this court is whether the Tahsildar and the Revenue Divisional Officer are justified in making separate assessment under the provisions of the Kerala Building Tax Act (hereinafter referred to as 'Act') and the rules framed thereunder.

2. Petitioners 1 and 2 are husband and wife. Even according to the pleadings of the petitioners, they have *jointly* purchased an extent of 16.908 cents of land comprised in Sy.Nos. 1080/1 B2 and 1080/1 C (new survey numbers being 435/1 and 435/7B) of Thrikkakkara North Village in Kanayannur Taluk. The said purchase was in the year 1989. Immediately after the said purchase, they have started construction of the building. Sometime in the year 1991, they have executed an agreement, agreeing to part with certain amounts as well as permitting the minor children to complete the construction.

3. The Tahsildar, while quantifying the tax payable by the appellants has assessed the building so constructed by the appellants 1 to 4/petitioners as one unit and has levied the tax under the Act. It was the assertion of the appellants/petitioners before the Tahsildar that the petitioners are separate owners of each unit in the building and therefore it has to be assessed

separately. In support of that contention, they had produced the agreement said to have been executed in the year 1991.

4. The Tahsildar, keeping in view the clarification issued by the Special Secretary (Taxes), Department of Taxes, Thiruvananthapuram vide letter No. 9031/83/89/TD dated 28.09.1990 has proceeded to hold that the contentions of the petitioners that the building in question is not a single unit and therefore it requires to be assessed separately, have no merit. Aggrieved by the said order passed by the Tahsildar, the appellants/petitioners have carried the matter by way of first appeal before the Revenue Divisional Officer. The said officer, by order dated 28.04.1997 has confirmed the orders passed by the Tahsildar. The Revenue Divisional Officer had also relied upon the clarification dated 28.009.1990 issued by the Special Secretary (Taxes). The correctness or otherwise of the orders passed by the Revenue Divisional Officer was the subject matter of the revision petition filed before the District Collector. The District Collector has also rejected the revision petition. Being aggrieved by those orders, the appellants/petitioners were before this Court in O.P.No. 16986 of 1998.

5. The learned single Judge by order dated 08.12.2006 has disposed of the said Original Petition, granting some reliefs to the petitioners. Aggrieved by the orders passed by the learned single Judge, the appellants/petitioners are before us in this Writ Appeal.

6. Learned counsel appearing for the appellants would contend that

the authorities under the Act are not justified in ignoring a registered agreement that was produced before the authorities at the time of quantification of tax liability under the provisions of the Act. According to the learned counsel, the appellants before this court own the property separately and therefore the authorities under the Act should have separately assessed the building in question under the provisions of the Act.

7. It is not disputed by the appellants that the appellant Nos. 1 and 2 had jointly purchased an extent of 16.908 cents of land comprised in Sy.Nos. 1080/1 B2 and 1080/1 C (new survey numbers being 435/1 and 435/7B) of Thrikkakkara North Village in Kanayannur Taluk. Immediately after such purchase, the appellant Nos. 1 and 2 have started the construction of the building. May be realising that they may have to pay additional tax under the provisions of the Act, they executed an agreement in favour of the minors/appellant Nos.3 and 4. Admittedly, this agreement has come into existence in the year 1991. Keeping this aspect of the matter in view, the Tahsildar, by applying the provisions of the Act and also the clarification issued by the Special Secretary, has come to the conclusion that the building in question requires to be assessed as a single unit, not as separate units as contended by the appellants/petitioners.

8. The appellant Nos. 3 and 4, before us, are only minors. According to appellant Nos. 1 and 2, they have entered into an agreement, in order to provide funds for appellant Nos. 3 and 4 for the purpose of construction of the

building. The agreement so executed by the appellant Nos. 1 and 2 in favour of appellant Nos. 3 and 4, need not be taken note of by the authorities since a clarification has already been issued by the superior authority, which is binding on the Tahsildar as well as the District Collector. The purport of the clarification is that if an agreement has come into existence after the commencement of the construction of the building, the said agreement need not be taken note of by the authorities, while computing the tax liability under the provisions of the Act. Keeping all these aspects of the matter in view, all the authorities under the Act as well as this court, in our opinion, have rightly rejected all the contentions canvassed by the appellants/petitioners before them. In that view of the matter, there is no error whatsoever in the orders passed by the authorities under the Act, which were confirmed by the learned single Judge. Therefore, the Writ Appeal requires to be rejected and it is rejected.

Ordered accordingly.

**H.L. DATTU,
CHIEF JUSTICE.**

**K.T. SANKARAN,
JUDGE.**

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